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MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			EXAMINER	LE, KAREN L
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERRY DWIGHT DOTY, III,
LUIS A. VIRIATO, and RONALD ROYCE MEADOWS

Appeal 2009-009478
Application 09/753,307
Technology Center 2600

Before ALLEN R. MacDONALD, THOMAS S. HAHN and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim(s)

Exemplary independent claim 1 under appeal reads as follows:

1. A method for switching active calls between entities on a network device, the method comprising:
 - determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls;
 - collecting information about a current call on the first processor while the current call is being processed by a first entity;
 - initializing a second processor residing in the network device with the first processor with the information while the current call is being processed on the first processor;
 - switching the current call from the first processor to the second processor;
 - releasing the first processor from further processing of the call; and
 - repeating the switching of the current call from the first processor until the first processor is free from all active calls for maintenance.

Examiner's Rejections

1. The Examiner rejected claims 1-4, 6, 7, and 9-19 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chong (US 6,205,557 B1) and Denby (US 6,976,062 B1).
2. Examiner rejected claims 5 and 8 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chong, Denby, and Zeck (US 2002/0101605 A1).

Appellant's Contentions

1. Appellants contend that the Examiner erred because:
 - (A) As to claim 1, “[t]he combination [of Chong and Denby] does not teach initializing a second processor while a current call is being processed on a first processor.” (App. Br. 9).
 - (B) As to claim 1, “[t]he combination [of Chong and Denby] does not teach repeating the switching of calls from the first processor.” (App. Br. 9).
 - (C) As to claim 12, again the combination does not teach repeating the switching of calls (App. Br. 15).

Issues on Appeal

Whether the Examiner has erred in rejecting claims 1-19 as being obvious because the references fail to teach the above argued limitations?

ANALYSIS

Appellants present numerous arguments as to why the Examiner has erred. (App. Br. 6-17). We agree only with Appellants' contentions numbered as 1 A-C above.

CONCLUSIONS

- (1) Appellants have established that the Examiner erred in rejecting claims 1-19 as being unpatentable under 35 U.S.C. § 103(a).
- (2) On this record, claims 1-19 have not been shown to be unpatentable.

DECISION

The Examiner' rejections of claims 1-19 are reversed.

REVERSED

KIS

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